

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Robert Rycerski,

Complainant,

vs.

SBC Pacific Bell,

Defendant.

(ECP)

Case 01-12-044

(Filed January 22, 2002)

**OPINION GRANTING RELIEF****1. Summary**

Robert Rycerski (Complainant) alleges that SBC Pacific Bell charged him for local toll calls which should have been billed as local calls to access his Internet Service Provider (ISP). SBC Pacific Bell alleges that its charges were correct. We grant Complainant's request for relief. Public Hearing was held on February 5, 2002.

**2. Position of the Parties**

Complainant disputes charges of \$314.87 for local toll calls included in Complainant's July and August 2001 statements for calls automatically dialed from Complainant's computer modem to (925) 887-3414 to access his ISP.

Complainant denies that his computer was set to dial this number. He says he triple checked his modem and it was not set to dial the number in question. Complainant believes that SBC Pacific Bell should have alerted him to

the sudden increase in the number of local toll calls originating from his telephone, just as any credit card company would do to protect consumers from fraudulent use of their credit cards.

SBC Pacific Bell argues that whether Complainant programmed the number into his computer or whether it was automatically dialed as a result of software provided by his ISP, SBC Pacific Bell properly billed Complainant when his modem called that number. Further, SBC Pacific Bell states its tariffs already provide for monitoring and notification of the customer when there is unusual activity in the account; however, the activity in Complainant's account was not sufficient to trigger a customer notification.

### **3. Discussion**

The facts presented here indicate a serious problem in regard to automatic direct-dialed calls from a computer to an ISP. Because the dial-up is automatic, the user is not alerted to the possibility that the dial-up number is a local toll call rather than a local call, and the user does not realize there is a problem until the monthly statement arrives with a shockingly high telephone bill.

SBC Pacific Bell's argument that Complainant's recourse is with his ISP has no merit. SBC Pacific Bell has made it difficult, inconvenient, and impracticable to get accurate information distinguishing local calls from local toll calls. This information, which at one time was provided in its telephone books, has been deleted from the telephone books with the notation to call the operator. But, as we have found, calling the operator often results in misinformation.

In Decision (D.) 02-08-069 in Case (C.) 01-03-028 *et al.*, we considered these problems in relation to SBC Pacific Bell. We found that in regard to obtaining local toll information “. . . contacting the ‘O’ operator increases the possibility of error and is less convenient.” (Finding of Fact 10.) And “substituting a less

accurate and less convenient means of obtaining local toll pricing information is unreasonable.” (Finding of Fact 11.) (D.02-08-069 at 14.) We concluded that SBC Pacific Bell had failed to provide just and reasonable service in violation of Pub. Util. Code § 451 (D.02-08-069 at 15), and that it should not be permitted to take advantage of its own wrong. (D.02-08-069 at 10, citing Civil Code § 3517.)

In D.02-08-069 we cancelled the local toll charges in dispute. Likewise, based on D.02-08-069, we cancel the \$314.87 charge in dispute here. We note that in D.02-08-069, we ordered SBC Pacific Bell to restore the local/toll calling information to its telephone books but, owing to publication schedules, the restoration will take a long time, and certainly comes too late for the calls involved in this complaint.

We are satisfied that the Complainant took all reasonable steps to ensure that his dialer software was not programmed to dial the disputed toll calls to access his ISP. Moreover, the problem experienced by Complainant is not unique. The Commission has received numerous similar complaints. The responsibility for remedying the situation lies with the phone companies and the ISPs. They are the beneficiaries of the customers’ dollars for dial-up Internet access, and only they have the technical expertise to fix the problem. They should not hold customers responsible for this situation. Accordingly, we reject SBC Pacific Bell’s argument that Complainant should be required to pay for the local toll calls in dispute.

#### **4. Assignment of Proceeding**

Carl W. Wood is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

**O R D E R**

**IT IS ORDERED** that:

1. The charge of \$314.87 is cancelled.
2. The \$314.87 on deposit with the Commission shall be disbursed to Robert Rycerski (Complainant).
3. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.